that was so. This further step would, of necessity have involved, the carrying out of chemical tests on adequate quantities of the plant material. What would be adequate quantities for this purpose would depend on the particular circumstances of each case and we do not consider that any useful purpose would be served by laying down any mathematical formula. Suffice it to say, that in the present case, we were not satisfied that the samples of plant material upon which the Chemist had carried out the chemical tests, were adequate, having regard to the total weight of the plant material, for the reasons stated.

We note that in the Singapore case of *PP v. Ang Soon Huat* [1991] 1 MLJ 1 where one of the contentions advanced by Counsel for the Accused was similar to that advanced in the present appeal, and where the contention was upheld, the Court having reminded itself of the criminal standard of proof, had concluded that where the Court was left in doubt as to whether the Accused has committed an offence in a lower or higher degree of seriousness, the Court should make a finding in the lower degree, particularly where a finding in a higher degree will give rise to a mandatory sentence of death.

The result, therefore, was that so far as the charge of trafficking in cannabis in contravention of s. 39(B) was concerned, "the case against the appellant was not proved with that certainty which is necessary in order to justify a verdict of guilty". (Per Lord Hewart, CJ in *R v. Wallace* 23 Cr App Rep 32, 35 CCA applied by Thomson, CJ in *Jubri v. PP* [1962] MLJ 34, 35 CA). Accordingly, we had no option but to allow the appeal, to quash the conviction for trafficking in cannabis, to set aside the sentence, and to substitute *in lieu* thereof, a conviction for possession of cannabis in contravention of s. 39(A) of the Act and a sentence of life imprisonment to take effect from the date of arrest, with the mandatory ten strokes of the rottan.

**RAJA ZAINAL ABIDIN BIN RAJA HAJI TACHIK & 3 ORS.**

**v.**

**BRITISH-AMERICAN LIFE & GENERAL INSURANCE BHD.**

SUPREME COURT, KUALA LUMPUR
TUN DATO' SERI ABDUL HAMID BIN OMAR LP, DATO' PEH SWEE CHIN SCJ, DATUK MOHAMED DZAIDDIN BIN HJ ABDULLAH SCJ
[CIVIL APPEAL NO. 02-317-91]
29 JULY 1993

***PRACTICE & PROCEDURE: Claim for moneys due and owing - Negotiated settlement of claim - Application to strike out statement of claim - O. 18 r. 19 Rules of the High Court 1980 - Lower Court dismissing application - Appeal against decision of lower Court.***

The defendants, being beneficial owners of shares in a company, sold their respective shares or shareholdings in the company to the plaintiff by an agreement dated 15 February 1985. Under the sale agreement, the defendants undertook, jointly and severally, to pay the plaintiff sums of money which represented the shortfall in the combined operating profits and the total value of the total assets of the company and its subsidiaries.

The seventh defendant and a subsidiary of the plaintiff entered into negotiations for settlement after the suit had been filed. The seventh defendant proposed to pay certain sums in full and final settlement, one of the conditions being that the plaintiff withdraw the suit against the defendants. This proposal was accepted by the subsidiary of the plaintiff without qualification and the sums proposed to be payed were duly paid.

Relying on the settlement the defendants applied to strike out the plaintiff's statement of claim, under O. 18 r. 19 Rules of the High Court 1980 (RHC 1980), on the grounds that the statement of claim was scandalous, frivolous and vexatious or that it would prejudice, embarrass and delay the fair trial of the action.

The plaintiff on the other hand, contended that the settlement could not operate as a release of the defendants from the plaintiff's claim in the suit. The Registrar allowed the defendants

application which decision was reversed by the learned Judge and the defendants appealed.

**Held:**

**[1]** The sole function of the Court was to construe a document with a view to finding the intention of the parties. That function was in reality to find the meaning of the words, for such meaning is equivalent to such intention of the parties for the purpose of interpretation.

**[2]** The words about withdrawing the suit, in para 3 of the seventh defendant's letter, unless there was strong reason to disregard them totally, would have to be accorded the meaning they clearly conveyed. The meaning of the words was a release of ALL the defendants in the suit and not just the seventh defendant and/or any other particular defendants. The plaintiff's action was therefore bound to fail.

**[3]** The lower Court should have scrutinized the evidence in order to decide whether the action was bound to fail. If so, it would have been found otiose to send the case back to its starting point to start its long and expensive course.

*[Appeal allowed with costs].*

**[Bahasa Malaysia** Transalation of Headnote]

***AMALAN & PROSEDUR: Tuntutan untuk wang yang patut dibayar dan terhutang - Merundingkan penyelesaian tuntutan - Permohonan untuk membatalkan pernyataan tuntutan - Aturan 18 k. 19 Kaedah-Kaedah Mahkamah Tinggi 1980 - Mahkamah rendah menolak permohonan - Rayuan terhadap keputusan Mahkamah rendah.***

Defendan-defendan, sebagai pemunya benefisial akan saham-saham dalam sebuah syarikat, telah menjual saham-saham atau pemegangan saham mereka dalam syarikat berkenaan kepada plaintif melalui satu perjanjian bertarikh 15 Februari 1985. Di bawah perjanjian jualan tersebut, defendan-defendan mengakujanji, secara bersesama dan berasingan, untuk membayar kepada plaintif jumlah wang yang merupakan sebagai kekurangan dalam operasi keuntungan bersama dan nilai penuh akan jumlah aset-aset syarikat berkenaan dan anak-anak syarikatnya.

Defendan ketujuh dan sebuah anak syarikat plaintif telah memasuki suatu rundingan penyelesaian selepas guaman tersebut difailkan. Defendan ketujuh mencadangkan untuk mambayar sejumlah wang tertentu dengan penuh dan sebagai penyelesaian muktamad, di mana salah satu daripada syarat-syaratnya ialah bahwa plaintif menarik balik guaman terhadap defendan-defendan. Cadangan ini telah diterima oleh anak syarikat plaintif itu tanpa syarat dan jumlah wang yang dicadangkan untuk pembayaran telah dijelaskan dengan sempurna.

Dengan bergantung kepada penyelesaian tersebut, defendan-defendan telah memohon untuk membatalkan pernyataan tuntutan plaintif di bawah A. 18 k. 19 Kaedah-Kaedah Mahkamah Tinggi 1980 (KMT 1980), atas alasan bahawa pernyataan tuntutan tersebut adalah mengaibkan, remeh dan menyusahkan atau bahawa ia akan menjejaskan, memalukan dan melengah-lengahkan perbicaraan adil akan tindakan tersebut.

Sebaliknya, plaintif mendebatkan bahawa penyelesaian tersebut tidak boleh berfungsi sebagai suatu pelepasan defendan-defendan daripada tuntutan plaintif dalam guaman tersebut. Pendaftar telah membenarkan permohonan defendan-defendan dan keputusan ini telah diterbalikkan oleh Hakim yang bijaksana tersebut dan defendan-defendan merayu terhadapnya.

**Diputuskan:**

**[1]** Fungsi tunggal Mahkamah ialah mentafsirkan sesuatu dokumen dengan pandangan untuk memutuskan niat pihak-pihak tersebut. Fungsi tersebut pada hakikatnya ialah mencari maksud perkataan-perkataan, kerana maksud sedemikian adalah bersamaan kepada niat sedemikian akan pihak-pihak berkenaan untuk maksud pentafsiran.

**[2]** Perkataan-perkataan mengenai menarik balik guaman tersebut, dalam perenggan 3 surat defendan ketujuh, melainkan terdapat sebab yang kuat untuk langsung tidak mengendahkannya, haruslah diberikan maksud yang jelas yang disampaikan oleh mereka. Maksud perkataan-perkataan tersebut adalah pelepasan KESEMUA defendan dalam guaman berkenaan dan bukan hanya defendan ketujuh sahaja dan/atau mana-mana defendan lain. Oleh yang demikian tindakan plaintif tentulah gagal.

**[3]** Mahkamah rendah sepatutnya meneliti keterangan berkenaan untuk memutuskan sama ada tindakan tersebut akan gagal. Sekiranya ya, tentulah ia akan didapati "otiose" untuk menghantar kes tersebut balik ke titik permulaannya bagi memulakan perjalanan kes yang lama dan mahal.

*[Rayuan dibenarkan dengan kos].*

**Cases referred to:**
*Shore v. Wilson [1942] A C & F 355, H L* ***(refd)***
*Tractors Malaysia Bhd. v. Tio Chee Hing [1975] 2 MLJ 1* ***(refd)***
*Pinnel's case [1602] 5 Co Rep 117a* ***(cit)***

**Legislation referred to:**
Contracts Act 1950, ss. 45, 65
Rules of the High Court 1980, O. 14, O. 18 r. 19

*For the appellants - G. Sri Ram (Rosli Dahlan with him); M/s. Allen & Gledhill*
*For the respondent - John Mathew (Karen Kaur with him); M/s. Shook Lin & Bok*

**JUDGMENT**

**Peh Swee Chin SCJ:**
Two letters figure prominently in this appeal with facts of the case practically undisputed. It will only be necessary to set out such of the facts as found necessary for elucidating the points in issue.

The appellants, together with 4 other parties, were cited as defendants in the civil suit concerned herein, brought by the respondent that was plaintiff below. (Such defendants are hereinafter called the defendants collectively; the appellants, the appellants/defendants, whenever the context requires the distinction; and the respondent, the plaintiff/company).

The defendants were beneficial owners of shares in a company called Britama Properties Sdn. Bhd, (hereinafter called the Britama). Britama is a holding company of 2 wholly-owned subsidiaries one of which is called Prime International (Holdings) Pte Ltd., (hereinafter called the Prime Company).

The defendants sold their respective shares or shareholdings in Britama to the plaintiff/company by an agreement dated 15 February 1985 (hereinafter called the sale agreement) in consideration of allotment to the defendants, shares in the plaintiff/company credited as fully paid up. Under the sale agreement, the defendants undertook, jointly and severally, to pay the plaintiff/company, sums of money by which, certain specified sums of money set out in the sale agreement and represented to the plaintiff/company by the defendants as correct, were less. These specified sums first referred to the amount of the combined operating profit of Britama and Prime company, and secondly to the amount of the total value of total assets of Britama and Prime Company and all their subsidiaries.

In addition to the sums undertaken to be paid as computed above, the defendants undertook also, jointly and severally, that the unaudited balance sheets of Britama made up to 31 December 1984 gave a fair view of the financial position of Britama.

All the above undisputed facts were set out in the relevant amended statement of claim dated 5 September 1987 by which it was further alleged that a sum of Singapore $3,298,244.83 owed by defendant No 7 from among the defendants (*viz*, Associated Management Services Pte Ltd.) to Britama was wrongly stated as part of the deposits of Britama with "bankers and other institutions".

The amended statement of claim claimed (a) $92,961, being the emerging shortfall in regard to the aforesaid combined operating profit, damages for breach of warranty or alternatively interest; (b) RM78,214, being the emerging shortfall in regard to the aforesaid value of total assets, damages for breach or alternatively interest and the said sum of $3,298,244.83, the sum which was said to have been wrongly described in the aforesaid balance sheets.

After the writ herein was filed, firm though intermittent negotiations were under way between defendant No 7 and British American Investment Pte Ltd., a subsidiary of the plaintiff/company which was allowed by the plaintiff/company to negotiate on its behalf with defendant No 7 with regard to the claim of the plaintiff/company in the civil suit concerned herein. Nothing of substance really turns on the right of this subsidiary to so negotiate on behalf of the plaintiff/company, (this company is hereinafter called British American IPL). On 4 April 1990, defendant No 7 wrote to

British American IPL regarding the settlement in connection with the civil suit concerned herein (hereinafter called the 1990 letter) which is the crux of the appeal and which is set out below:

ASSOCIATED MANAGEMENT SERVICES (PTE) LTD.

c/o No 1 Sixth Lok Yang Road,
Singapore 2262

4 April 1990

Mr Steve S V Wong
British American Investment Pte Ltd.
57 Robinson Road
6th storey
British American Insurance Building
Singapore 0106

Dear Sir

We write to offer you, pursuant to the Charge dated 7 July 1989, the sum of S$3,800,000 (this is inclusive of the RM1,500,000 due to British American Life and General Assurance Bhd and/or its subsidiaries and associates and S$150,000 representing lump sum payment of interest accruing) as full and final settlement.

In consideration of this payment you will undertake to release the 6 million Pacific Can Investment Holdings Ltd. shares to us.

Pursuant to this settlement you will undertake as a condition precedent to cause British American Life and General Insurance Bhd to withdraw all legal action against the Writer, the 1st, 2nd and 8th defendants and withdraw the Kuala Lumpur High Court Suit No D3-23-2194-87 as stated in their letter of 1 April 1989.

If you are in agreement to this letter, please sign and return to us a copy together with your receipt in acknowledgment.

Yours truly

Sgd
E K H Goh
Director

We BRITISH AMERICAN INVESTMENTS PTE LTD. confirm our acceptance of the offer and conditions as stated above.

Pang HN Long
For and on behalf of BRITISH AMERICAN INVESTMENTS PTE LTD.

The 1990 letter mentions another letter dated April 1989 sent by plaintiff/company to defendant No 7 with a copy thereof to British American IPL by which the plaintiff/company has set great store. This letter (hereinafter called 1989 letter) is set out below:

BRITISH AMERICAN LIFE AND GENERAL INSURANCE BHD

1 April 1989

Associated Management Services (Pte) Ltd.
c/o 1 Sixth Lok Yang Road
SINGAPORE 2262

Dear Sirs

Re: Kuala Lumpur High Court Suit No D3-23-2194-87

We refer to the above suit wherein you are the 7th defendant.

We are pleased to accept your offer to settle our claims against yourselves as follows:

1. (a) payment of S$520,603 to British American Investments Pte Ltd. in settlement of our claim under paragraph 10(b) of the Amended Statement of Claim.
   (b) payment of RM1,500,000 to ourselves in settlement of our claims in respect of all the other prayers of the Amended Statement of Claim.
2. In consideration of the above payments and on receipt of the same, we shall cause the above action against yourselves and the 1st, 2nd and 8th defendants to be discontinued.
3. The payments referred to hereinabove are to be made within one hundred and eighty (180) days from the date hereof failing which we are at liberty to continue all legal proceedings against yourselves and the 1st, 2nd and 8th defendants.
4. This settlement should not be construed or operate as a release of any cause of action of the 3rd, 4th, 5th and 6th defendants ("them") or any of them nor shall it be construed or operate as a release of any claim or claims we have or may have against them and it shall not prejudice or affect our rights to proceed with our claims against them.

Yours faithfully

Sgd
(Shahridan Mohd Sa'aid)
Company Secretary

cc: British American Investments Pte Ltd.

It is pertinent to observe that the offer or counter offer by the plaintiff/company to settle on the plaintiff/company's terms lapsed after

the said 180 days with no forthcoming acceptance from defendant No 7.

The settlement offered by defendant No 7 by the 1990 letter and accepted by the British American IPL was carried out with the sum duly received.

After the sum was paid, the appellants, (4 of the defendants) applied by summons before the learned Registrar under O. 18 r.19 of the Rules of the High Court 1980, relying on the settlement, for striking out the plaintiff/company's amended statement of claim on the grounds that the statement of claim was scandalous, frivolous and vexatious or it might prejudice, embarrass and delay the fair trial of the action.

The supporting affidavit of the appellants there relied heavily on the 1990 letter and averred, to the effect, that the plaintiff/company's action could no longer be maintained.

The opposing affidavit of the plaintiff/company on the other hand, relied principally on the 1989 letter and that by the 1989 letter, the 1990 settlement could not operate as a release of the appellants from the plaintiff/company's claim in the civil suit concerned herein.

The application of the appellants succeeded before the learned Registrar whose decision was reversed by the learned Judge in the Court below, and the appeal now before us is an appeal from the learned Judge's decision.

The two letters thus fall to be considered. It is well known that the terms of a contract may be contained in more than one document, thus e.g., one of two documents may expressly or by necessary implication refer to another document as being subject to the said other document, thereby causing the terms of the other document to be incorporated by reference into the first-mentioned document. Such effect, if it is to be given initially to any document, will initially depend on the construction itself of a document such as the first-mentioned document.

We now consider whether the terms of the 1989 letter ought to be deemed to be incorporated into the 1990 letter by reference by first looking at the 1990 letter. It was written almost 1 year after the letter of 1989. Only the 3rd paragraph of this letter of 1990 contains the reference to the letter of 1989 and in these words:

> Pursuant to this letter settlement you will undertake as a condition precedent to cause British American Life and General Insurance Bhd to withdraw all legal action against the Writer, the 1st, 2nd and 8th defendants and withdraw the Kuala Lumpur High Court Suit No D3-23-2194-87 as stated in their letter of 1 April 1989.

Looking more closely, the letter of 1990 does not have a heading containing the identifying numbers of the civil suit concerned herein so that its absence would have rendered it necessary for the writer of the letter of 1990, when offering a settlement, to express the particulars of the civil suit concerned herein in the body of the letter so that the addressee would be reminded of the nature of the claim of the plaintiff/company in the civil suit concerned herein, and above all, to relate the settlement to the said civil suit.

It is further observed that at the foot of the letter of 1990, the addressee signed in confirmation of "our acceptance of the offer and conditions as stated above" without any qualification.

As part of the settlement, the plaintiff/company agreed in effect in the letter of 1990 to "withdraw the Kuala Lumpur High Court Civil Suit No D3-23-2194-87 as stated in their letter of 1 April 1989". The words "as stated in their letter of 1 April 1989", were relied on by the plaintiff/company and we will comment on them later on.

It is to be borne in mind that it is the sole function of the Court to construe a document with a view to finding the intention of the parties. The function is in reality to find the meaning of the words, for such meaning is equivalent to such intention of the parties for the purpose of interpretation, please see a similar observation in *Shore v. Wilson* [1942] A C & F 355, H L.

The words about withdrawing the civil suit concerned herein in para 3 aforesaid, unless there is strong reason to disregard them totally, would have to be accorded the meaning they clearly convey. Such strong reason may be that the words are so repugnant to the rest of the letter of 1990, that they ought to be totally

disregarded by applying the Golden Rule of construction. The words, "..... as stated in their letter of 1 April 1989" are more probably than not, mere words that as a matter of grammar, qualify the identifying numbers of the civil suit concerned herein and cannot be construed as having the effect of incorporating the terms of the letter of 1989 except by an unjustifiable stretch of imagination. It is to be borne in mind that should defendant No 7 ask for less than the withdrawal of the whole civil suit concerned herein but namely ask for withdrawal of legal action against itself and its friends *viz*. the other defendants, then the appellants could ask defendant No 7 and its friends to contribute to any further sums proportionally which the plaintiff/company might succeed in recovering against the appellants.

The inference from paragraph 3 of the letter of 1990 is therefore that defendant No 7, through its director defendant No 2, offered a settlement for all the defendants (including the present appellants) and not just itself, in the civil suit which was required by defendant No 7 to be withdrawn. We are of the view that the meaning of the words is a release of ALL defendants in the civil suit concerned herein, and not just defendant No 7 and/or any other particular defendants. The action is therefore bound to fail. We therefore have reached a decision on the merits.

This decision also puts paid to the submission of the respondent based on s. 45 of the Contracts Act 1950 which provides that a release of a joint promisor does not discharge any other joint promisor, here, the settlement is a release of all joint promisors.

However, the learned Judge in the Court below, who is very experienced and very able, and who referred very much to the same issues, appears to be much exercised by the fact that the application was made under O.18 r.19, in reversing the learned Registrar's decision, in holding:

> On the facts of this case I consider that O.18 r.19 is not appropriate to shut out the plaintiffs from pursuing their claims ...

The cautionary words are words which have been frequently employed in connection with an application under O.14. It was unfortunate that the case of *Tractors Malaysia Bhd. v. Tio Chee Hing* [1975] 2 MLJ 1, a Privy Council case was not cited in the Court below, though it was cited to us here.

In *Tractors,* the defendants applied to set aside the pleadings there on the grounds that they were frivolous and vexatious. The High Court allowed the application holding that the action was bound to fail. The Federal Court, on appeal, regarded themselves as precluded from examining the evidence for determining whether the action was bound to fail. The Privy Council held that the Federal Court was in error for not examining the evidence and deciding as to whether the action there was bound to fail, though the power to dismiss an action summarily was a drastic power. The Privy Council went through the evidence with a fine-tooth comb and decided to agree with the learned Judge at first instance and restored the High Court's decision. It is to be remembered that the High Court always has an inherent jurisdiction to prevent abuse of its process irrespective of whether it is expressly called for or not in an application under O.18 r.19 unless such application is limited solely to the ground that any pleading does not disclose a reasonable cause of action or defence as the case may be.

In passing, we would like to say that we are not unmindful of the interesting argument on certain legal points which were however only advanced by learned Counsel for the appellants, made necessary no doubt by the then possibility that this Court might hold that the letter of 1990 ought to be read as being subject to the letter of 1989. The said legal points were the common law rule in *Pinnel's case* [1602] 5 Co Rep 117a, s. 65 of the Contracts Act 1950, etc. but they are not necessary for the Court in reaching its decision. It would not be appropriate to deal with them here and now and they have to be put away for another day.

In conclusion, with great respect, the learned Judge could have avoided the pitfall as described by the Privy Council in the *Tractors* (supra). The lower Court should have also scrutinized the evidence in order to decide whether the action was bound to fail. If so, it would have been found otiose to send the case back to its starting point to start its long and expensive course *albeit* such a conclusion was reached on an application filed under O.18 r. 19.

We must emphasize that for any Court to reach such a similar decision on an application under O.18 r.19, there must, in all probability, have been an absence of conflict of material evidence or of conflict of affidavits on material points so that seemingly triable issues, seemingly difficult ones, could be readily decided in such a way as to lead to the conclusion that the action was bound to fail.

We therefore allow the appeal herein by restoring the decision of the learned Registrar in question in striking out the amended statement of claim and also dismissing the claims of the plaintiff/company in the civil suit concerned herein. The respondent will have to pay costs here and below.

**UNITED MALAYAN BANKING CORPORATION BERHAD**

**v.**

**PEMBINAAN KSY SDN. BHD. & 2 ORS.**

SUPREME COURT, IPOH
TUN DATO' SERI ABDUL HAMID BIN OMAR LP, TAN SRI DATO' MOHD. EUSOFF BIN CHIN SCJ, DATUK MOHAMED DZAIDDIN BIN HJ ABDULLAH SCJ.
[CIVIL APPEAL NO. 03-101-92]
9 JULY 1993

***PRACTICE & PROCEDURE: Application for summary judgment - Whether amended defence disclosed arguable or triable case - Approach to be taken by appellate Court in an O. 14 Rules of the High Court 1980 appeal.***

The appellant granted the first respondent banking facilities in consideration of which the second and third respondent together with another executed a continuing guarantee and indemnity in favour of the appellant for due repayment of the total principal sum advanced to the first respondent together with interest.

The first respondent defaulted in repayment of the facilities and the appellant commenced legal action against the respondents for the sum of RM2,745,455.32 being the amount due and owing by the respondents as at 30 December 1988 together with interest and costs.

The respondents claimed that when the appellant recalled the facilities, the first respondent sought permission to dispose of all their public quoted shares which had been mortgaged to the appellant which permission was refused. The shares were in fact only disposed of after their price had fallen. The questions that arose for determination was whether this defence disclosed an arguable or triable case and whether the appellant owed a duty of care to the respondent, and if so, whether that duty of care had been properly or reasonably exercised in obtaining the best price for the said shares.

The High Court Judge allowed an appeal by the respondents against the decision of the Registrar giving leave to the appellant to sign final judgment under O. 14 Rules of the High Court 1980 and the appellant appealed.